Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Consolidated Application of XM Satellite Radio Holdings Inc. and Sirius Satellite Radio Inc. For Consent to Transfer Control	)))	MB Docket No. 07-57

COMMENTS OF SLACKER INC.

Slacker Inc. respectfully submits these comments in the above-captioned proceeding. Slacker takes no position regarding whether the Commission should approve the merger of Sirius Satellite Radio Inc. ("Sirius") and XM Satellite Radio Holdings Inc. ("XM"). Slacker is concerned, however, that this merger may have the effect of limiting the ability of consumers to have a choice of audio services in their automobiles. Accordingly, Slacker requests that the Commission develop a complete record concerning this important subject and that, if the Commission otherwise decides to approve the application, it impose two conditions assuring that present and future mobile audio technologies have nondiscriminatory access to automobiles.

Slacker is a new personal audio service that will soon be available nationwide. A more complete description of Slacker is available at www.slacker.com. Slacker customers get content for their Slacker device via WiFi, Internet, and satellite. While in a car or truck, customers will be able to use WiFi or satellite connections. Slacker does not consider itself to offer a substitutable service for XM or Sirius satellite radio services, and does not intend to price its services and equipment based on XM or Sirius prices.

XM and Sirius have sought close relationships with car manufacturers, which are a matter of public record and are hereby incorporated by reference into this proceeding.[1] General Motors (GM) always had an ownership interest in XM, first through Hughes Aircraft Corporation, then a wholly owned subsidiary of GM when XM was formed in 1992, and then in 1999 through direct investment and through DirecTV, at that time also a subsidiary of GM. GM holds a seat on the XM Board of Directors, as does Honda Motors. Sirius also has strong relationships with, among others, DaimlerChrysler and Ford since the 1990s. These relationships have resulted in satellite radios becoming integrated in millions of cars throughout the United States.

Although XM and Sirius have exclusive relationships with some car manufacturers, car dealers presently can often install competitor's satellite radios. Car manufacturers have an incentive to permit customers to obtain in their cars whatever audio service the customers prefer. But the proposed XM-Sirius merger could give the merged company enough economic leverage to obtain or expand exclusive arrangements with car manufacturers. And to the extent car manufacturers also have economic interests in the single satellite radio provider, they will have an incentive to make it difficult or impossible for alternative technologies to be installed in cars. For example, car manufacturers could take the position that installing alternative audio technologies would violate the terms of automobile leases or warranties.

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[1] *See, e.g.*, Sirius Satellite Radio Inc. SEC Form 10-K for year ending Dec. 31, 2006, at 3 (describing Sirius's agreements with several car manufacturers); XM Satellite Radio Holdings Inc. and XM Satellite Radio Inc. SEC Form 10-K for year ending Dec. 31, 2006, at 4 (describing XM's exclusive agreement with GM and its relationship with other car manufacturers including American Honda Motors).

Slacker recommends that if the Commission decides to approve the application, it impose two conditions that would directly address this merger-specific issue and that would protect and extend competition to provide audio services to passengers in cars. First, the merged company should not be permitted to continue or enter into any exclusive arrangement with any car manufacturer; to the extent XM or Sirius has any current contracts that provide for exclusivity, those exclusivity provisions should be terminated before they may close the merger transaction. Similar conditions have been imposed in analogous circumstances. *See, e.g., In the Matter of Comsat Corporation*, 16 FCC Rcd. 21661 (2001) at ¶ 52 (discussing the prohibition against any exclusive arrangements or management ties between ICO Global Communications and Inmarsat after the former was spun off from Inmarsat); *In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control,* 19 FCC Rcd. 473 (2004), Appendix F (merger condition prohibiting News Corp. from offering any of its national and regional programming services on an exclusive basis to any multichannel video programming distributor). Second, the Commission should not permit car manufacturers to be represented on the board of directors of the newly formed company.

These two reasonable measures would help assure that the merger will not interfere with consumers' ability to obtain new wireless audio services in their vehicles.

Respectfully submitted,

/s/

Seema Burke
Chief Counsel
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July 9, 2007

cc: Philip Malet, Counsel to Slacker, Inc.
Gary Epstein, Counsel to XM Satellite Radio Holdings Inc.
Richard Wiley, Counsel to Sirius Satellite Radio Inc.

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2007 copies of the foregoing Comments were served via U.S. mail, postage prepaid upon the following:

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